

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of	)	GC Docket No. 92-52
	)	
Reexamination of the	)	RM 7739
Policy Statement on	)	RM 7740
Comparative Broadcast	)	RM 7741
Hearings	)	

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OFFICE OF SECRETARY

**COMMENTS OF PALOMA BROADCASTING COMPANY, INC.  
ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

**I. Introduction and Statement of Interest**

Paloma Broadcasting Company, Inc. ("Paloma"), through its attorneys, hereby submits its reply comments in the above-captioned rulemaking proceeding.

Paloma is a wholly owned subsidiary of Diocesan Telecommunications Corporation ("DTC"). DTC is a non-commercial/non-profit entity affiliated with the Catholic Diocese of Corpus Christi, Texas and is the owner of two educational FM Radio stations located, respectively, in Corpus Christi and Laredo, Texas. DTC and Paloma have separate Boards of Directors.

Paloma is the owner of low power television stations located in the Corpus Christi area. Paloma has a network affiliation agreement with Fox operating out of three low power television stations in Corpus Christi, Kingsville and Alice, Texas. Paloma also has a spanish language network affiliation agreement with Telemundo to operate low power television stations in Corpus

Christi, Kingsville/Alice and Beeville/Refugio, Texas. Paloma originates local news programming in english and will begin providing spanish local news programming in early Fall of this year.

Paloma's interest in this proceeding stems from the harsh reality that under the Commission's present comparative broadcast criteria Paloma, although a locally owned broadcast station providing quality local service, would have difficulty being a successful applicant for a mutually exclusive broadcast license.

Paloma would not be successful under the present criteria because: (1) it does not have integrated ownership and management; (2) Paloma's minority ownership is not 100% and; (3) the significant broadcast experience of Paloma's managers would be given minimal weight in the comparative hearing process.

Despite the fact that Paloma would not score well under the Commission's present comparative criteria and would have difficulty being successful in a comparative broadcast hearing, Paloma is very qualified to successfully own and operate a full-power television station. Paloma is qualified because it draws upon a wealth of broadcast experience which it uses everyday in making sound broadcast decisions. Further, Paloma is locally owned which allows it to be responsive to the needs of the community in which it serves.

Unfortunately, under the present comparative broadcast criteria broadcast experience and local residency are only considered "enhancers" to the credit given an applicant during

an integration analysis. (Policy Statement at 395, 396.) Paloma believes that the consideration given local ownership and broadcast experience should be increased to reflect their importance in accurately predicting whether an applicant will best serve the public interest and whether a station owner will be ultimately successful.

Accordingly, Paloma urges the Commission to heed the advice of the commenters who suggest a revision of the comparative broadcast criteria to accord significant weight to broadcast experience and local ownership.

## **II. Local Ownership Should Receive Significant Credit**

The Commission has a long-standing interest in promoting localism. (See FCC Policy Statement on Comparative Broadcast Hearings 1 FCC 2d 393, 396 (1965.) [hereinafter "Policy Statement"] (local residence enhances an applicant's ability to have continuing knowledge of changing local interests and needs.)

Localism should be promoted because locally owned broadcast stations are able to assess the needs of the members of the communities in which they serve and are better able to respond to those needs in a timely fashion. This responsiveness fosters the Commission's goal of providing the "best practicable service to the public" (Policy Statement at 394.)

The need to be responsive to the community is especially pronounced in communities with special language needs, such as the spanish language communities in which Paloma serves. Local stations like Paloma could not survive unless they demonstrated

an understanding of the community and a commitment to provide the best service possible to the residents of that community. This heightened sensitivity to the community's needs must be present in all areas of broadcast operations from programming to marketing.

The D.C. Court of Appeals also recognized the importance of localism. In Bechtel v. F.C.C., the court called into question the importance the Commission has placed on integration to the exclusion of other factors, such as local residency, by stating "[f]amiliarity with a community seems much more likely than station visitors or correspondence to make one aware of community needs. But even long-time residence generates at most a 'qualitative' enhancement of an applicant's integration credit." (dicta, Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1994.))

It is clear that elevating the significance of local ownership as a comparative broadcast criterion would be in the public's best interest. Accordingly, Paloma urges the Commission to revise the comparative criteria to elevate the comparative credit given to owners of local stations like Paloma.

### III. Broadcast Experience

Perhaps the most important predictor of an applicant's ability to run a successful broadcast station is prior broadcast experience. As with local residency, the court in Bechtel criticized the weight the Commission placed on integration while viewing as "minor" the weight of broadcast experience:

"Although the Commission has argued that broadcast experience should be of minor

significance because it can come with time it is hard to imagine that anyone seriously interested in picking winners would so heavily downgrade the contestants' track records."

Bechtel at 884.

The "track record" of an applicant is important during every stage of operation of a broadcast station, from construction to programming. As a particularly illuminating example, not too long ago the General Manager of Paloma received a phone call from a broadcast applicant who had been awarded a construction permit and was calling to inquire about the steps necessary to place the station on the air. The permittee was ignorant of construction timetables as well as the amount of effort necessary to commence broadcasting. The permittee believed that it would be possible to put the station on the air, after just having poured the foundation, within two months.

These types of permittees are at a great risk of losing their stations, for failure to construct, simply because they lack the experience and the knowledge of the requirements necessary to place a station in operation. Additionally, and perhaps more importantly, because of their ignorance regarding the broadcast industry these owners are likely to repeatedly violate the Commission's rules and regulations regarding the operation of broadcast facilities.

Even assuming that an applicant clears the first hurdle and constructs within the time required under Commission guidelines, there are many more hurdles that a station owner must clear in

order to successfully operate a broadcast station.

As a further example, Paloma's General Manager, who is a programming expert, received an inquiry from another inexperienced broadcaster seeking advice on the best way to go about securing programming for his station. It is well known among experienced television broadcasters that there are many sophisticated decisions that must be made with regard to programming such as: (1) identifying the viewing audience and its current, as well as future, programming needs; (2) identifying the costs involved in obtaining programming, as well as; (3) being able to negotiate the best cost for that programming and; (4) being aware of the custom and practice in the industry regarding negotiations for programming. An inexperienced broadcaster who fails to identify the correct programming for the target market audience or who makes incorrect estimates regarding the cost of that programming is doomed to failure.

Although the Commission's goal of not wanting to "discour[age] qualified newcomers to broadcasting" (Policy Statement at 396) is laudatory, an applicant whose broadcast knowledge is so deficient that he cannot comprehend what is necessary financially or practically to construct a broadcast station, or of what is necessary to secure programming for that station is surely not equipped to handle the daily tasks that are crucial in operating a station in the best interest of the public, regardless of how "quick" a learner the applicant may be.

Further, although the Commission believes that this

experience can be learned in time, it is not in the best interest of the public to allow an inexperienced broadcaster to "learn the ropes" at the public's expense. Especially when there is an experienced applicant whose track record demonstrates that he would be successful.

#### IV. Multiple Ownership

Traditionally, ownership of low power television stations has resulted in a diversification demerit of "minimal" to "slight" weight due to the "secondary nature of the low power television service, its inherently limited coverage potential, its minor significance in the marketplace, as well as the distance of the facilities held to those requested." See In re Global Information Technologies, Inc., 8 FCC Rcd 4024, 4029 (1993); See also In re Mark Wodlinger, 101 FCC 2d 763, 767 (Rev. Bd. 1985). Paloma supports the continued treatment of low power television stations under the current multiple ownership rules.

#### V. Conclusion

For all of the foregoing reasons, Paloma requests that the Commission revise its comparative broadcast criteria to elevate the importance of local ownership and broadcast experience, and retains its policy on multiple ownership regarding low power

television stations.


Respectfully submitted,

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